

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ALBERT M. SARMIENTO

Claim No. CU-3567

Decision No. CU

4009

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

David M. Gonshak, Esquire

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended in the amount of \$67,000.00, was presented by ALBERT M. SARMIENTO based upon the asserted loss of seven airplanes in Cuba. Claimant has been a national of the United States since naturalization on February 24, 1943.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record establishes and the Commission finds that claimant purchased in October and November 1958, seven new Piper aircraft in the United States. The airplanes were duly registered with the United States Department of Commerce, Civil Aeronautics Administration and were transferred to Havana, Cuba, shortly thereafter. In December 1958 the seven airplanes were stored at the Havana Army Airport.

It further appears from the evidence of record that in January, 1959 claimant went to the Havana Army Airport with the intention of arranging for the retransfer of the seven airplanes to the United States. A Cuban army major denied claimant any access to his airplanes, and claimant has never been able to recover them.

On the basis of the evidence of record, the Commission finds that claimant's seven airplanes were taken by the Government of Cuba on January 15, 1959.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The evidence includes copies of the bills of sale pursuant to which claimant acquired title to the seven airplanes, and claimant's affidavit and other statements concerning this claim. Moreover, claimant was allowed a Federal tax deduction in the amount of \$67,000.00, the purchase price of the seven airplanes.

Based upon the entire record, the Commission finds that the value of claimant's seven airplanes on January 15, 1959, the date of loss, was \$67,000.00, and concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see the Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that ALBERT M. SARMIENTO suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-Seven Thousand Dollars (\$67,000.00) with interest thereon at 6% per annum from January 15, 1959 to the date of settlement.

Dated at Washington, D.C.,  
and entered as the Proposed  
Decision of the Commission

OCT 8 1969

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)